

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESAL PRICE LITIGATION

MDL No. 1456

Civil Action No. 01-12257-PBS

THIS DOCUMENT RELATES TO:

Judge Patti B. Saris

ALL CLASS ACTIONS

ORAL ARGUMENT REQUESTED

**TRACK ONE DEFENDANTS' EMERGENCY MOTION TO DECLARE
THE *TOUHY* REGULATION INAPPLICABLE AND FOR
LEAVE TO TAKE TRIAL DEPOSITIONS OF
CERTAIN FORMER GOVERNMENT EMPLOYEES**

The Track One Defendants respectfully move this Court (1) to declare that the *Touhy* regulation does not authorize the Government to prevent certain former Government employees from testifying because the Government is a party to these proceedings, and (2) for leave to depose former government employees who decline to testify voluntarily. The grounds for this motion are set forth in the accompanying memorandum.

WHEREFORE, the Track One Defendants respectfully request that this Motion be GRANTED, and that the Court issue a trial subpoena within seven days for former government employees who refuse to testify voluntarily.

REQUEST FOR ORAL ARGUMENT

Pursuant to LR. 7.1, the Track One Defendants respectfully request that oral argument be heard on this motion.

Respectfully Submitted,

TRACK ONE DEFENDANTS

/s/ John T. Montgomery

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Warrick Pharmaceuticals Corporation*

Dated: October 20, 2006

CERTIFICATE OF COMPLIANCE WITH LR. 7.1

I hereby certify that counsel for Schering conferred with counsel for the Government in a good faith effort to resolve or narrow the issues set forth herein.

/s/ Adam Wright
Adam Wright

CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2006, I caused a true and correct copy of the foregoing to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456.

/s/ Adam Wright
Adam Wright